IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/02/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
and
THE HONOURABLE MR.JUSTICE F.M. IBRAHIM KALIFULLAH

W.A.1644 of 1998

A.Ruckmani .. Appellant

-Vs-

1. The Correspondent,
Gandhiji Aided Middle School,
Keelasiviri.

2. The District Elementary Education
Officer,
Villupuram.

3. The Chief Educational Officer,
Villupuram.

4. The Joint Director of
Elementary Education,
D.P.I., College Road,
Madras-6. .. Respondents

Writ Appeal filed against the judgment dated 30.8.1997 in W.P.No.154
41 of 1995, delivered by this Court.

!For Appellant : Ms.K.Suguna

^For Respondents : Mr. S.N.Ravichandran,
for Mr.R.Venkatakrishnan,
for R.1.
Mrs. T.Kokilavani,G.A.
for R.2 to R.4.

:J U D G M E N T

(THE JUDGMENT OF THE COURT WAS DELIVERED BY V.S.SIRPURKAR,J)

The appellant herein challenges the common order passed by the
learned Single Judge of this Court in W.P.Nos.11257 of 1995, 13099 of 199 5,

15441 of 1995 and 3818 of 1997. Out of these petitions, we are concerned only with the Writ Petition No.15441 of 1995 which was filed by the present appellant/petitioner. In her petition, she had challenged the order passed by the Joint Director, dated 31.7.1995 whereby her claim for promotion as a Headmistress in the Middle School was turned down. We are not really concerned with the earlier history of litigation, because the Writ Appeal can be disposed of only on the basis of the contentions raised by the appellant and the facts relating to her.

2. It is an admitted position that the appellant was working as Secondary Grade Assistant Teacher right from 1964 in the concerned school. A vacancy for the Middle School Headmaster/Headmistress arose in the month of June, 1993 for that post. However, later on, i.e., in February, 1994, the qualifications required for the post were upgraded, in the sense that hitherto though a non-B.Ed., candidate could be appointed as a Headmaster or Headmistress of the school, after February, 1994, it was only a person who was having the qualification of B.Ed. after graduation could be appointed as Headmistress or Headmaster, as the case may be. The appellant was not appointed though she staked her claim for that post which was filled up on 2.2.1994; instead, one outsider came to be appointed and this was challenged by way of appeal which was filed on 12.2.1994. The appeal was rejected on 25.10.1 994. Therefore, a Writ Petition came to be filed wherein this Court directed the appellant to file a second appeal, perhaps to the Joint Director which accordingly was filed. That appeal has also been dismissed by the Joint Director, taking the view that on the date when the post was filled up, the appellant did not have the necessary qualifications, as she was not B.Ed., degree holder and that she acquired that qualification for the first time in March 1994 only.

3. The learned Single Judge also took the same view and pointed out that on the date when the vacancy was filled up on 2.2.1994, the appellant was not duly qualified for occupying the post of Headmistress. The learned Single Judge took into account the situation that the appellant acquired the qualification of B.Ed., only in the year 1994 in the month of March and as such, on the date when the post was filled up, she was not qualified.

4. It is this judgment which has been challenged before us. The learned counsel for the appellant, Ms.K.Suguna very vehemently contended before us, the fact that the appellant was the seniormost teacher in the school and was also adequately qualified, if not on 2.2.1994 but on 31.7.1995 when the appeal was dismissed by the Joint Director should have been taken into consideration. In short, she contends that since the appeal was decided on 31.7.1995, on that date atleast she was having the necessary qualification and as such, she should have been promoted to the post of Headmistress. It is additionally contended that J.Deivakadatcham who was eventually appointed from open market also did not have the necessary qualification of experience of five years and as such, there was no other person available for being promoted to the post of Headmaster, excepting the appellant. It is pointed out that even that appointment was struck down by the Joint Director.

5. What would be the relevant date would be a question in this appeal. The learned Single Judge has taken a view that on the date when the post was filled up, i.e., on 2.2.1994, it is an admitted position that the appellant did not have the necessary qualification of B.Ed., though she had

appeared for the examination in the month of May, 199 3, since the results of the examination were not declared till March, 1994. Under the circumstances, the contention of the learned counsel for the appellant cannot be accepted that the relevant date should have been the date on which the Joint Director decided the appeal, i.e., on 31.7.1995. The entitlement of the petitioner for being appointed in the post would always be with reference to the date on which the post fell vacant and when she staked the claim to that post. 6. The learned counsel for the appellant however contented that under the Fundamental Rules and more particularly Rule 26, where the qualification of a Government servant to hold the post depends upon his passing any examination, it has to be reckoned from the last date of the examination on which he has appeared for the same, if eventually he passes that examination even on the later date meaning thereby that he is deemed to have passed on the last date of his examination. The learned counsel contended that in that way, she appeared for the B.Ed., examination in May, 1993 and it should have been held that she is qualified for the post with effect from that date because she ultimately passed the same. However, Rule 26 of the Fundamental Rules speaks specifically about the increment aspect and not the promotion aspect. For the purpose of promotion, the relevant date would be only the date when the appellant has acquired or is in possession of the necessary qualification. Admittedly, the appellant did not have that qualification on 2.2.1994, inasmuch as she was not qualified successfully in her B.Ed., examination and it cannot be said that she was having the qualification of graduation with B.Ed. degree. Under the circumstances, it will have to be viewed that the appellant did not have the qualification on the date when the post fell vacant and sought to be filled in.

7. Unfortunately, the appellant has now retired and the learned counsel for the appellant contends that during all these years, there was no appointment made in the post of Headmaster/Headmistress. However, this statement is countered by the learned counsel on behalf of the school who states that one Rajalakshmi who was the only candidate having the B.Ed., qualification at the time when the post fell vacant was appointed ultimately to that post. This Rajalakshmi, initially did not opt to become the Headmistress and did not give her consent for appointment. However, it seems ultimately later on she had changed her mind and had decided to give her consent for being appointed as Headmistress and accordingly, she was actually appointed as the Headmistress. If that is so, there would be no question of any injustice done to the appellant, because admittedly on the date when the post fell vacant, Rajalakshmi was the only person who was available for being appointed as the Headmistress. According to the learned counsel for the appellant, even Rajalakhsmi's appointment is lying for approval with the department. Therefore, we do not express anything on that question. The department may take its usual course in approving or disapproving her appointment. That is not the question involved in this appeal.

8. The only question involved is regarding the rights of the appellant and unfortunately for her, she has none. In view of this, it must be said that the learned Single Judge was right in dismissing the appeal. We do not find anything erroneous with the order of the learned Single Judge. Order of the Single Judge is confirmed. Writ Appeal is dismissed, but without any order as to costs.

Index: Yes
Web Site: Yes
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